

Exhibit A

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION

3 SECURITIES AND EXCHANGE) CONFIDENTIAL
4 COMMISSION,)
5 Plaintiff,)
6 -against-) Civil Action No.:
7 ROBERT J. MUELLER, DEEPROOT) 5:21-cv-785-XR
8 FUNDS LLC (a/k/a dprrt Funds,)
9 LLC), AND POLICY SERVICES INC.,)
10 Defendants,)
11 -and-)
12 DEEPROOT TECH LLC, DEEPROOT)
13 PINBALL LLC, DEEPROOT STUDIOS LLC,)
14 DEEPROOT SPORTS & ENTERTAINMENT)
15 LLC, AND DEEPROOT RE 12621)
16 SILICON DR LLC, AND ROBERT J.)
17 MUELLER, JEFFREY L. MUELLER, AND)
18 BELINDA G. BREEN, AS CO-TRUSTEES)
19 OF THE MB HALE OHANA REVOCABLE TRUST,))
20 Relief Defendants.)
21 _____)

17 ORAL AND VIDEOTAPED DEPOSITION OF ROBERT MUELLER, produced
18 as a witness at the instance of the Plaintiff and duly
19 sworn, was taken in the above styled and numbered cause on
20 Thursday, March 9, 2023, from 9:36 a.m. to 7:35 p.m.,
21 before Janalyn Elkins, CSR, in and for the State of Texas,
22 reported by computerized stenotype machine, at the offices
23 of Davis Santos, PC, 719 Flores Street, San Antonio,
24 Texas, pursuant to the Federal Rules of Civil Procedure
25 and any provisions stated on the record herein.

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A P P E A R A N C E S

FOR THE PLAINTIFF:

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Also Present:

GABE SEYMORE (Videographer)

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12:27:40 1 Q. (BY MR. NASSE) Did you ever tell Mr. Concilla
12:27:43 2 that you were taking loans from any of the funds?

12:27:49 3 MR. HULINGS: Objection. Okay. So the --
12:27:56 4 is that question limited to pre-2019?

12:28:01 5 MR. NASSE: Sure. Yes.

12:28:03 6 MR. HULINGS: All right. You can answer as
12:28:07 7 long as it's before January 1, 2019.

12:28:11 8 THE WITNESS: We had very frank and robust
12:28:13 9 discussions about almost everything we did with Dennis
12:28:17 10 and Andy. They had an insight into almost everything
12:28:20 11 that we did. I don't know what you mean by loans. We
12:28:24 12 talk about payments here. But yes, they knew that was
12:28:27 13 happening and it just confirmed it that I refreshed his
12:28:31 14 memory about it here.

12:28:33 15 Q. (BY MR. NASSE) That you understood that
12:28:34 16 payments were happening indirectly?

12:28:37 17 Okay. Do you have any specific
12:28:39 18 recollection of discussing taking out loans from any of
12:28:42 19 the deeproot businesses?

12:28:44 20 MR. HULINGS: Objection; vague and loans --
12:28:48 21 vague as to loans from the deeproot businesses.

12:28:52 22 MR. NASSE: Well, I'm happy to clarify.

12:28:54 23 MR. HULINGS: Yeah. Just clean the
12:28:55 24 question up a little bit, yeah.

12:28:57 25 Q. (BY MR. NASSE) Do you have any specific

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12:30:24 1 in the process of -- in this August here as we just
12:30:28 2 talked about earlier, process of getting the dGRD term
12:30:32 3 sheet into a compliant -- securities compliant fund.

12:30:36 4 So, yeah, it wouldn't surprise me at all if
12:30:40 5 discussions around, you want the term loans or loans or
12:30:44 6 anything else came up during those periods.

12:30:47 7 Q. (BY MR. NASSE) Yeah. And again, I mean, I
12:30:48 8 think you answered my -- I didn't ask you whether it
12:30:50 9 would surprise you. I asked if there's any specific
12:30:53 10 recollection of any discussion regarding loans previous
12:30:55 11 to 2015 for Policy Services or any of its affiliated
12:30:59 12 businesses?

12:30:59 13 MR. HULINGS: I believe it's been asked and
12:31:01 14 answered multiple times now.

12:31:05 15 THE WITNESS: I don't recall specifically.
12:31:08 16 But I recall that we had conversations where that
12:31:11 17 conversation could have come up as I've already
12:31:13 18 answered.

12:31:13 19 Q. (BY MR. NASSE) Okay. And did you recall
12:31:16 20 Carlile Patchen providing you any advice in terms of if
12:31:19 21 you were going to take loans, what would be required in
12:31:21 22 terms of disclosure or documentation?

12:31:23 23 MR. HULINGS: Objection; vague and
12:31:26 24 compound.

12:31:27 25 But you can answer provided that it's prior

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12:31:28 1 to 2019.

12:31:31 2 Q. (BY MR. NASSE) Yes.

12:31:31 3 A. Sure. They provided advice and what the proper
12:31:34 4 disclosures were for all of our documents and we relied
12:31:38 5 on that.

12:31:39 6 Q. Yeah. Do you have a specific recollection of
12:31:40 7 them providing that advice as it related to you taking
12:31:44 8 out loans from Policy Services, Inc. or any of its
12:31:47 9 affiliated businesses?

12:31:48 10 MR. HULINGS: Objection; vague.

12:31:50 11 THE WITNESS: If there was anything -- and
12:31:52 12 I can't recall the specific, you know, PPMs that either
12:31:54 13 are being referred here or after. But yes, if there
12:31:56 14 were disclosures in that PPM regarding that, they either
12:32:00 15 gave the advice that it was necessary to put it in or it
12:32:02 16 was not necessary.

12:32:04 17 Q. (BY MR. NASSE) If you had a discussion?

12:32:05 18 A. We did have -- we did have discussions, as I
12:32:07 19 said, regarding compensation and whether you want to
12:32:12 20 term it as a loan, as payment, as a salary, whatever.

12:32:16 21 Q. Yeah. I specifically loan -- a loan is
12:32:19 22 something you have to pay back. Compensation
12:32:21 23 is something-- I mean, you're an attorney, Mr. Mueller,
12:32:21 24 correct?

12:32:21 25 REPORTER: Is what?

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12:33:22 1 but you're getting an answer. And that's -- you may not
12:33:24 2 like it, but you're getting an answer. You have asked
12:33:27 3 the same question four times now.

12:33:29 4 MR. NASSE: I haven't got an answer.

12:33:31 5 Q. (BY MR. NASSE) Do you have any specific
12:33:32 6 recollection of any advice you received regarding loans,
12:33:35 7 not compensation or pay, specifically loans from -- you
12:33:38 8 taking loans from Policy Service, Inc. or any of its
12:33:43 9 affiliated enterprises?

12:33:43 10 MR. HULINGS: Same objections;
12:33:46 11 argumentative, vague, asked and answered five times now.

12:33:50 12 THE WITNESS: We had wide-ranging
12:33:51 13 discussions on a lot of issues including of course
12:33:54 14 payments and anything that would be regarded payments as
12:33:58 15 they would need to be disclosed or not in the PPMs.

12:34:10 16 MR. NASSE: Just note for the record
12:34:11 17 nothing about loans in your answer.

12:34:13 18 MR. HULINGS: Move to strike.

12:34:14 19 MR. NASSE: I think we are -- I think we
12:34:18 20 can take a break for lunch if you want. Off the record.

12:34:21 21 VIDEOGRAPHER: We are off the record at
12:34:24 22 12:34 p.m.

12:34:25 23 (Brief recess.)

01:29:34 24 VIDEOGRAPHER: We are back on the record at
01:29:56 25 1:30 p.m.

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01:32:16 1 offering details and there's a paragraph number 15.

01:32:20 2 Do you see where I'm at?

01:32:21 3 A. Yes.

01:32:21 4 Q. And you see there's the second sentence says,
01:32:24 5 (Reading:) The fund advisor or managers retain sole and
01:32:28 6 absolute discretion over due diligence purchase and
01:32:29 7 maintenance of the assets.

01:32:30 8 Do you see that?

01:32:32 9 A. I do.

01:32:32 10 Q. Okay. And you were the manager of the 575 Fund?

01:32:35 11 A. Yes.

01:32:36 12 Q. Was there a separate fund advisor for 575 Fund?

01:32:42 13 A. Not to my recollection.

01:32:47 14 Q. If you could go to paragraph -- so it's page

01:33:01 15 ending in Bates 4 -- 504. And there's a paragraph F at

01:33:14 16 the top of that page.

01:33:15 17 Do you see that?

01:33:16 18 A. Yes.

01:33:17 19 Q. And just go ahead and you can review that
01:33:28 20 paragraph. Just let me know when you're done.

01:33:35 21 A. Okay.

01:33:54 22 Q. Okay. Do you recall receiving advice from
01:33:59 23 Carlile Patchen or any other counsel specifically as
01:34:02 24 related to the text in paragraph F?

01:34:08 25 A. My recollection is that all -- all these

119

CONFIDENTIAL

01:34:11 1 paragraphs in this section came in one form or another
01:34:15 2 from -- you said CPM or Carlile Patchen & Murphy, yes.

01:34:22 3 Q. Okay. Do you recall any specific conversations
01:34:24 4 or -- with -- I'll use your term, CPM, regarding the
01:34:30 5 text of paragraph F?

01:34:32 6 A. I know that we had conversations about all of
01:34:38 7 these. I cannot remember specifically what was said.

01:34:41 8 Q. In your conversations regarding this PPM, do
01:34:47 9 you recall any specific conversations with CPM regarding
01:34:54 10 your ability to take loans from Policy Services or any
01:34:59 11 of its affiliated entities?

01:35:01 12 MR. HULINGS: So objection; vague as to
01:35:03 13 loans and asked and answered.

01:35:13 14 THE WITNESS: Sorry. I don't see anything
01:35:15 15 about loans in this paragraph.

01:35:16 16 Q. (BY MR. NASSE) Yeah, in general, in connection
01:35:18 17 with drafting this PPM for 575.

01:35:21 18 A. So, like, the previous questions before we took
01:35:22 19 a break and --

01:35:23 20 Q. Well, I'm asking specific as to this document.

01:35:27 21 A. It would be the same answer that I've answered
01:35:29 22 those -- that question multiple times.

01:35:32 23 Q. And in your conversations about paragraph F,
01:35:41 24 which it said some agreements, including those involving
01:35:44 25 compensation, are not arm's length, did you discuss with

120

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01:37:00 1 discussions on all these and how we operated our
01:37:04 2 business internally with Dennis and Andy. We didn't
01:37:07 3 hide anything from them.

01:37:09 4 Q. To paragraph -- so it's on page ending in 4505,
01:37:22 5 paragraph M, (Reading:) Inadequate valuations and their
01:37:26 6 affect on the counting and class B shares, the company
01:37:29 7 and the class B shares.

01:37:30 8 Do you see that?

01:37:31 9 A. Yes.

01:37:32 10 Q. Did you -- do you recall any specific
01:37:34 11 discussions with Carlile Patchen regarding what's
01:37:38 12 paragraph M in Exhibit 36?

01:37:43 13 THE REPORTER: M or N?

01:37:45 14 MR. NASSE: M, Mike.

01:37:47 15 THE WITNESS: Again, this likely would have
01:38:07 16 come from them. I'm sure we discussed it. I don't
01:38:10 17 recall specifically our back and forth over this. Most
01:38:14 18 of these when -- when they advised that we needed to
01:38:16 19 disclose something, unless there's something glaring on
01:38:21 20 there that we might need to correct them about a fact or
01:38:24 21 another issue, typically, take your attorney's advice.

01:38:27 22 Q. (BY MR. NASSE) And when they provide that
01:38:29 23 advice, again, that would be either over the telephone
01:38:31 24 or an email?

01:38:33 25 A. Yes.

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01:43:37 1 the years, including these conversations, would be in
01:43:42 2 those documents.

01:43:43 3 Q. Okay. On the bottom of that same page, Bates
01:43:53 4 No. 4505, there's underlying assets in the subsection
01:43:57 5 life policies.

01:43:58 6 Do you see that?

01:43:58 7 A. Yes.

01:43:59 8 Q. In your discussions with Carlile -- did you
01:44:06 9 have discussions with Carlile Patchen regarding this
01:44:09 10 section of the PPM?

01:44:18 11 A. Yes.

01:44:18 12 Q. Okay. And in those discussions did you
01:44:19 13 disclose to Carlile Patchen that the company, this is
01:44:26 14 deeproot funds as defined here nor the fund themselves,
01:44:30 15 would hold title to the life policies?

01:44:33 16 MR. HULINGS: Vague.

01:44:34 17 THE WITNESS: I don't know if I agree with
01:44:36 18 your characterization. My recollection is this was
01:44:38 19 copied over to some extent from our previous funds that
01:44:42 20 had been talked about and vetted over a long period of
01:44:45 21 time.

01:44:45 22 Q. (BY MR. NASSE) Yeah, that's fine. But my
01:44:50 23 question is: Do you recall conversations with them
01:44:52 24 where you talk about this provision -- these provisions
01:44:56 25 in the PPM, the life policy --

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01:44:58 1 Do you recall discussions with counsel
01:45:00 2 regarding the life policy provisions in the PPM in
01:45:04 3 Exhibit 36 where you disclose that neither the company
01:45:09 4 as defined in this document nor the fund itself would
01:45:13 5 hold title to the policy -- to the life policies?

01:45:16 6 MR. HULINGS: Objection; vague.

01:45:17 7 THE WITNESS: Yes, it was one of many
01:45:19 8 elements that we talked about and how we structured the
01:45:24 9 multiple companies that we were working with.

01:45:26 10 Q. (BY MR. NASSE) When were those discussions?

01:45:28 11 A. They would have been when we were drafting
01:45:31 12 this.

01:45:31 13 Q. Do you have a specific recollection of the date
01:45:33 14 or time when those discussions occurred?

01:45:35 15 A. Of course, I don't.

01:45:36 16 Q. As far as you know, are you aware of any
01:45:39 17 records of those conversations?

01:45:41 18 A. If they would have happened, they would have
01:45:44 19 either been, you know, with the older funds. They would
01:45:47 20 have been tied in with the new funds. They would have
01:45:51 21 been verbal conversations, email or it would have been,
01:45:53 22 as we've talked about before, updates to the actual
01:45:56 23 document itself here.

01:45:57 24 Q. Did you -- did you ever tell Carlile Patchen
01:46:02 25 that only Policy Services held title to the life

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01:46:05 1 policies?

01:46:06 2 MR. HULINGS: Objection; vague. I think
01:46:08 3 misstates prior evidence.

01:46:10 4 THE WITNESS: When are you referring to?

01:46:12 5 Q. (BY MR. NASSE) At this time when you were
01:46:14 6 drafting this document.

01:46:14 7 A. I didn't need to tell them. They already knew.

01:46:17 8 Q. And how do you know that?

01:46:18 9 A. I think I was pretty clear a second ago that
01:46:23 10 Dennis and Andy by this time knew intimately everything
01:46:27 11 we were doing and how everything were structured and
01:46:30 12 that Policy Services had held title to all the policies
01:46:32 13 since prior to them even becoming our attorneys.

01:46:36 14 Q. Did you discuss with Carlile Patchen why Policy
01:46:44 15 Services is nowhere referenced in this PPM?

01:46:44 16 THE REPORTER: Is?

01:46:44 17 MR. NASSE: Policy Services is nowhere
01:46:53 18 referenced in this PPM.

01:46:53 19 MR. HULINGS: Objection; that's vague and
01:46:55 20 argumentative.

01:46:56 21 THE WITNESS: Without -- without going
01:46:57 22 through the entire PPM to confirm that, I can't -- I
01:47:02 23 can't answer that.

01:47:03 24 Q. (BY MR. NASSE) Well, my question is --

01:47:04 25 A. There had to be some reference. I just don't

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01:47:07 1 know where the reference might be. And if it's not
01:47:10 2 there, then at the time Dennis and Andy must not have
01:47:13 3 felt it necessary.

01:47:13 4 Q. Do you recall discussing whether Policy
01:47:17 5 Services should be disclosed in this PPM?

01:47:19 6 A. I'm sure we did.

01:47:20 7 Q. Do you have a recollection of doing so?

01:47:23 8 A. We're talking about, you know, eight to nine
01:47:26 9 years ago. We're talking about voluminous emails,
01:47:32 10 edits, and verbal conversations, hours upon hours upon
01:47:37 11 hours. I don't remember every little detail. But I can
01:47:39 12 remember general concepts.

01:47:41 13 And, yes, when we go over this together,
01:47:42 14 we're going over it to make sure that everything is
01:47:45 15 correct and that we've provided them all the information
01:47:47 16 they need to determine whether it needs to be disclosed.

01:47:51 17 Q. Let's go to 506. If you go to the bottom of
01:48:28 18 page 506, Exhibit 36, Capital Acquisition deeproot Tech.

01:48:32 19 Do you see that?

01:48:33 20 A. Yes.

01:48:34 21 Q. In the last sentence of the first paragraph
01:48:40 22 there, (Reading:) We minimize this risk by limiting the
01:48:45 23 capital acquisition component of a company to 45 percent
01:48:48 24 of the asset portfolio.

01:48:50 25 Do you see that?

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01:48:51 1 A. Yes.

01:48:51 2 Q. And the company is -- capitalized defined term
01:48:55 3 is deeproot Funds -- 575 Fund LLC; is that right?

01:48:59 4 A. I'm sorry. Please repeat your question.

01:49:02 5 Q. What -- company is the 575 Fund in this
01:49:06 6 document?

01:49:08 7 A. Deeproot 575 Fund LLC.

01:49:10 8 Q. Correct. That's the company that's referred
01:49:14 9 to --

01:49:14 10 A. That's the issuer, yes.

01:49:16 11 Q. Did you discuss this provision with Carlile
01:49:22 12 Patchen?

01:49:22 13 A. I don't remember this specific provision being
01:49:25 14 there in the final one. But again, that's just
01:49:28 15 recollection. But again, we discussed everything in
01:49:31 16 here. They made the determination of what needs to be
01:49:36 17 disclosed or not based upon our discussions and
01:49:40 18 collaboration. And they specifically signed off
01:49:42 19 emphatically that everything in here was legal,
01:49:45 20 securities compliant, and we were ready to proceed with
01:49:49 21 subscriptions.

01:49:49 22 Q. Do you recall discussing with Carlile Patchen
01:49:54 23 how you were determining the allocation percentage, the
01:49:57 24 45 percent as listed in the paragraph I just read to
01:50:00 25 you?

CONFIDENTIAL

01:50:00 1 MR. HULINGS: Objection; vague.

01:50:02 2 THE WITNESS: Of course we did since that

01:50:03 3 was a major component. I don't recall the specific

01:50:08 4 conversations, but, of course, we would have.

01:50:10 5 Q. (BY MR. NASSE) Do you recall Carlile Patchen
01:50:15 6 ever telling you that -- advising you that you do not
01:50:18 7 have to disclose that Policy Services owned all the life
01:50:21 8 policies?

01:50:21 9 MR. HULINGS: Objection; vague.

01:50:24 10 THE WITNESS: My answer would be is if they
01:50:27 11 signed off on this and if it, indeed, does not disclose
01:50:32 12 that, then they felt that that was okay and we took
01:50:35 13 their advice.

01:50:36 14 Q. (BY MR. NASSE) Okay. My question was: Do you
01:50:38 15 have a recollection of them saying -- affirmatively
01:50:41 16 saying to you, you do not need to disclose Policy
01:50:44 17 Services, Inc. in this PPM?

01:50:46 18 MR. HULINGS: Objection; vague, asked and
01:50:47 19 answered.

01:50:48 20 THE WITNESS: I believe I have answered
01:50:50 21 that.

01:50:51 22 Q. (BY MR. NASSE) So it's "no" you don't have a
01:50:54 23 recollection of that?

01:50:56 24 MR. HULINGS: Argumentative.

01:50:57 25 THE WITNESS: I said that there was

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01:52:12 1 conclusion and I don't remember when it comes to talking
01:52:18 2 about the ownership and the structure of our companies,
01:52:22 3 which Dennis and Andy were completely involved in and
01:52:25 4 advised on. I don't recall what their specific legal
01:52:29 5 counsel was other than that they felt it was okay as is
01:52:34 6 and we move forward.

01:52:35 7 Q. (BY MR. NASSE) Yeah. My question wasn't
01:52:38 8 asking for a legal opinion. You're the fund manager and
01:52:41 9 advisor. So my question is: As a fund manager and
01:52:45 10 advisor, did you disclose to them that deeproot -- 575
01:52:50 11 Fund LLC did not own any -- would not own any portion of
01:52:53 12 deeproot Tech?

01:52:56 13 MR. HULINGS: So vague as to -- as to
01:53:00 14 "own."

01:53:00 15 You can answer.

01:53:02 16 THE WITNESS: As I've said before, I'm sure
01:53:04 17 we discussed it and I can't remember if I said that
01:53:09 18 specifically because I'm not going to put words in my
01:53:12 19 mouth and I'm not going to let you do it either.

01:53:15 20 I can tell you that Dennis and Andy knew
01:53:19 21 exactly how we were organized because they helped set it
01:53:22 22 up. They knew what needed to go in here and didn't need
01:53:25 23 to go in here and they knew what needed to be disclosed
01:53:27 24 and not disclosed to investors and we took their advice.

01:53:30 25 Q. (BY MR. NASSE) So you told Carlile Patchen

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02:08:32 1 MR. HULINGS: So it misstates the evidence,
02:08:34 2 also asked and answered, and it's vague.

02:08:36 3 THE WITNESS: I'm sure we did have the
02:08:38 4 conversations with him -- with them as we were going
02:08:40 5 through this with Centri and with BDO. I cannot recall
02:08:43 6 a specific conversation.

02:08:46 7 Q. (BY MR. NASSE) Go to page Bates No. 4509.
02:09:10 8 This is a provision at the top that says, "Company
02:09:12 9 advance."

02:09:14 10 A. I see it.

02:09:17 11 Q. Do you have any specific recollections of
02:09:19 12 conversations with Carlile Patchen regarding the company
02:09:22 13 advance provision in Exhibit 36?

02:09:25 14 A. I'm sure we had conversations about it
02:09:34 15 throughout the entire process. I don't believe this was
02:09:38 16 a provision in the prior Debenture funds. This was
02:09:43 17 introduced later on. And so, yes, I'm sure we had a lot
02:09:47 18 of conversations about this paragraph.

02:09:49 19 Q. You don't have any recollection of a specific
02:09:53 20 conversation?

02:09:53 21 MR. HULINGS: Objection; vague as to
02:09:55 22 specific conversation. Are you looking for dates?

02:09:57 23 MR. NASSE: Yeah, a date or time of when.

02:10:01 24 THE WITNESS: I don't recollect in the
02:10:02 25 months that we were designing and drafting this back and

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02:10:06 1 forth. I don't recall exactly when or where we added or
02:10:12 2 discussed the company advance during that period.

02:10:14 3 Q. (BY MR. NASSE) And your discussions with
02:10:15 4 Carlile Patchen regarding the company advance, did you
02:10:22 5 discuss the fact whether you needed controls or
02:10:25 6 processes to ensure you would stay within the 20 percent
02:10:31 7 limit of company advance?

02:10:33 8 MR. HULINGS: Objection as to controls and
02:10:36 9 processes, vague.

02:10:38 10 THE WITNESS: I'm sure that we discussed a
02:10:41 11 wide ranging when it comes to this about controls. Not
02:10:45 12 just in this provision as we discussed before and I
02:10:49 13 answered before is that we, over many years, had talked
02:10:52 14 about how we processed our business and what internal
02:10:55 15 controls that we use.

02:10:57 16 Q. (BY MR. NASSE) What were the internal controls
02:10:58 17 to ensure you didn't exceed 20 percent of the company
02:11:03 18 advance provision?

02:11:04 19 MR. HULINGS: Objection; vague as the term
02:11:08 20 "controls."

02:11:09 21 MR. NASSE: I'm using it the way he used it
02:11:10 22 in his prior answer.

02:11:12 23 THE WITNESS: They knew we documented in
02:11:13 24 paper. They knew we documented online. They knew we
02:11:17 25 kept -- had reports and spreadsheets. They knew we kept

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02:16:26 1 THE WITNESS: Again, I've answered that. I
02:16:28 2 don't know specifically in the QuickBook files or
02:16:30 3 accounting records how the bookkeeper and how the
02:16:33 4 accountants managed those accounts, titled those
02:16:36 5 accounts, et cetera.

02:16:37 6 Q. (BY MR. NASSE) So let me just ask you this:
02:16:38 7 So an investor comes in and they invest \$100,000. Do
02:16:43 8 you take that 20 -- do you take the \$20,000 and put it
02:16:47 9 in a separate account?

02:16:48 10 MR. HULINGS: Objection; improper
02:16:50 11 hypothetical, and vague and ambiguous.

02:16:53 12 THE WITNESS: That was not usually how we
02:16:55 13 were advised to do the flow of funds.

02:16:59 14 Q. (BY MR. NASSE) Did you -- well, I didn't ask
02:17:03 15 about the flow of funds. I asked how would you
02:17:08 16 segregate the money to be used for company advance?

02:17:11 17 A. We were never advised to segregate it.

02:17:14 18 Q. Did you ever tell -- did you ever discuss with
02:17:17 19 Carlile Patchen how you were using company advance?

02:17:21 20 A. We did discuss it -- sorry --

02:17:24 21 MR. HULINGS: Go ahead.

02:17:25 22 THE WITNESS: We did discuss it, of course,
02:17:28 23 especially when we went through the DRSS 1 process.

02:17:31 24 Q. (BY MR. NASSE) And again, that process was
02:17:35 25 related to a different fund, correct?

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02:17:36 1 A. No. As I think I've stated several times today
02:17:39 2 is that we started that whole process with reviewing
02:17:42 3 where we were at that point and that is the dGRD and
02:17:46 4 the575.

02:17:49 5 Q. Right. But you didn't submit -- you didn't --
02:17:51 6 nothing in your DRS was a submission on behalf of 575 or
02:17:55 7 dGRD?

02:17:57 8 A. I think I've been clear and I will restate it
02:18:01 9 is that these funds were a progression of work product
02:18:04 10 from the very beginning that built on each other. We
02:18:08 11 used vetted language. And so when we got to the S-1 and
02:18:13 12 DRS processes and we had brought in Centri to start
02:18:18 13 writing the financial terms and disclosures and then BDO
02:18:22 14 having to audit that and then working with our attorneys
02:18:25 15 during that process, we were using and started with the
02:18:29 16 existing funds and the fund disclosures and the
02:18:31 17 processes of controls that we had in relation to them.

02:18:41 18 Q. So you can't recall -- I just want to make
02:18:44 19 sure. You have no recollection of a written policy
02:18:46 20 governing the company advance?

02:18:48 21 MR. HULINGS: Asked and answered.

02:18:50 22 THE WITNESS: I have answered. I answered
02:18:52 23 that several times.

02:18:53 24 Q. (BY MR. NASSE) And you have no recollection of
02:18:56 25 a specific report that would tell you whether you had

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02:19:01 1 exceeded or under the 20 percent as described in the
02:19:05 2 company advance?

02:19:05 3 MR. HULINGS: Hold on. Asked and answered
02:19:08 4 and vague as "specific report."

02:19:10 5 THE WITNESS: When I asked for a report
02:19:12 6 from Chris, I got a big bill. So when we did reports,
02:19:15 7 we tried to do reports in the system that would have and
02:19:18 8 hold multiple purposes. So I do not -- it might have
02:19:21 9 been there in some form or fashion specifically, but I
02:19:23 10 don't recall there being an actual specific report that
02:19:27 11 we asked him to program that would have pulled and
02:19:30 12 compiled and aggregated the data for the 20 percent. I
02:19:35 13 would have likely gone to one or more other reports that
02:19:38 14 were multi-use.

02:19:40 15 Q. (BY MR. NASSE) And did you ever discuss with
02:19:48 16 Carlile Patchen how you were monitoring the 20 percent
02:19:51 17 in the company advance?

02:19:55 18 MR. HULINGS: Asked and answered.

02:19:56 19 THE WITNESS: Yeah, I'm sure we did.

02:19:58 20 Q. (BY MR. NASSE) And who was your bookkeeper?

02:20:02 21 A. Her name was Charlotte Acker.

02:20:04 22 Q. And how often did she reconcile the company
02:20:09 23 books?

02:20:10 24 A. It varied year to year. It started being more
02:20:14 25 less toward the end of the year for -- it could be a

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02:20:18 1 week and a half. It could be three weeks. It just
02:20:21 2 depended on the amount of data and getting the
02:20:24 3 accountants to direct her what to do and then
02:20:27 4 reconciling all of the -- whatever entries she had
02:20:31 5 questions on.

02:20:32 6 Q. And you would provide her information that she
02:20:35 7 would enter into QuickBooks?

02:20:38 8 A. I --

02:20:38 9 MR. HULINGS: Go ahead.

02:20:39 10 THE WITNESS: I would provide her some of
02:20:41 11 the information.

02:20:42 12 Q. (BY MR. NASSE) The company advance provision
02:20:56 13 says this amount, I'm looking at -- I think it's the
02:20:58 14 second sentence. (Reading:) This amount covers agent
02:21:00 15 compensation, if any, nominal administration expenses,
02:21:05 16 IRA fees and other compensation marketing costs and the
02:21:07 17 fund advisor fees.

02:21:09 18 Do you see that?

02:21:10 19 A. Yes.

02:21:10 20 Q. Okay. Did you have any -- do you recall any
02:21:13 21 discussions with Carlile Patchen specifically about
02:21:15 22 the -- what was covered under nominal administration
02:21:17 23 expenses?

02:21:20 24 MR. HULINGS: Assuming that is before
02:21:22 25 January 2019, you can answer.

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02:21:24 1 MR. NASSE: Yes. Yes.

02:21:26 2 THE WITNESS: Yes. This whole section,
02:21:27 3 again, came from them as we are trying to disclose
02:21:33 4 what -- what the company advance could be used for. And
02:21:37 5 my recollection is that nominal administration expenses,
02:21:40 6 I mean, speak for itself.

02:21:42 7 Q. (BY MR. NASSE) I just want to make sure I
02:21:44 8 understand. You do recall a specific conversation with
02:21:47 9 Carlile Patchen regarding what was covered under the
02:21:49 10 term "nominal administration expenses"?

02:21:52 11 MR. HULINGS: So object as to vague as to
02:21:54 12 "specific conversation." Are you looking for a date or
02:21:56 13 the fact that a conversation took place?

02:21:59 14 MR. NASSE: The fact that the -- we'll
02:22:01 15 start there. The fact that a conversation took place.

02:22:01 16 THE WITNESS: Yes.

02:22:04 17 Q. (BY MR. NASSE) Okay. When was that?

02:22:05 18 A. It was multiple conversations between maybe
02:22:14 19 spring, March, and whenever we -- whenever we finalized
02:22:18 20 this.

02:22:19 21 Q. In 2015?

02:22:20 22 A. 2015.

02:22:20 23 Q. Okay. And when you say "we," you and
02:22:22 24 Mr. Concilla?

02:22:24 25 A. And Andy, I believe.

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02:22:25 1 Q. And Mr. Federico?

02:22:26 2 A. Yes.

02:22:27 3 Q. And what was -- what was the nature -- what did
02:22:35 4 they tell you about nominal administration expenses?

02:22:39 5 A. Well, there was an email that kind of started
02:22:41 6 all of this off including the Pinball in early 2015.
02:22:44 7 And it talked about the realities of the business and
02:22:48 8 the struggles we were facing with the Debenture funds.
02:22:54 9 And the question was covering contingencies, revenue
02:23:00 10 gaps down the road, a catch-all, so to speak.

02:23:04 11 And I'm more blunt usually and just would
02:23:09 12 like to write things out pretty bluntly. And as we were
02:23:12 13 talking about this company advance and some of these
02:23:15 14 things, they advised that we narrow it down to this
02:23:18 15 language, that this was adequate disclosure.

02:23:22 16 Q. Okay. Let's break that down a bit.

02:23:26 17 When you say, "cover various expenses,"
02:23:28 18 what expenses are you specifically referring to?

02:23:31 19 A. Exactly what -- your question a minute ago was
02:23:34 20 about administrative -- or administration expenses as it
02:23:39 21 reads. That's exactly what we're talking about.
02:23:43 22 Expenses of the administration of the fund, of operating
02:23:47 23 the fund, et cetera.

02:23:48 24 Q. Okay. And you said this is in an email?

02:23:58 25 A. I'm sorry?

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02:24:00 1 Q. You said this discussion is in an email?

02:24:02 2 A. It started with an email and the discussion was
02:24:04 3 as we went to the Pinball PPM --

02:24:07 4 Q. Again, and my question is: Is there discussion
02:24:10 5 of nominal administration expenses are used in that term
02:24:12 6 in an email?

02:24:13 7 MR. HULINGS: Asked and answered.

02:24:15 8 THE WITNESS: I can't recall if it's in an
02:24:17 9 email or if it was verbal. But it happened many, many
02:24:23 10 times so I'm sure there's likely an email out there, I
02:24:25 11 just -- I don't know without going back and looking.

02:24:28 12 Q. (BY MR. NASSE) And in those discussions did
02:24:31 13 you ask Carlile Patchen whether the term "nominal
02:24:35 14 administration expenses" could cover priority return
02:24:39 15 payments to investors?

02:24:42 16 A. My understanding in the advice I received is
02:24:48 17 that 575 payment -- 575 P payments due investors are
02:24:52 18 expenses of the fund and they would be included.

02:24:55 19 Q. Okay. So there -- so Carlile Patchen told you
02:24:59 20 that nominal administration expenses, that provision
02:25:02 21 could be used to pay prior to return payments to 575
02:25:07 22 Fund investors?

02:25:09 23 A. Over the multiple times we did it in one form
02:25:12 24 or another, yes.

02:25:13 25 Q. What do you mean by "one form or another"?

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02:25:16 1 A. Well, I mean, administration expenses is pretty
02:25:20 2 broad and that's intentionally why they wanted it. And
02:25:24 3 as I've testified before with -- we didn't hide anything
02:25:29 4 from Dennis and Andy. And in their view being compliant
02:25:35 5 with securities laws and in their view of proper
02:25:40 6 disclosure to investors, they took a much longer section
02:25:44 7 than this that was proposed previously and they boiled
02:25:47 8 it down to this abbreviated by boiling a lot of the
02:25:52 9 other stuff down to nominal administration expenses.

02:25:56 10 Q. I just want to make sure I understand. What
02:25:59 11 did you ask them about nominal administration expenses
02:26:02 12 as related to payments of priority return payments to
02:26:06 13 575 Fund investors?

02:26:07 14 MR. HULINGS: Asked and answered.

02:26:08 15 THE WITNESS: I mean, I have answered that,
02:26:11 16 is that a wide-ranging area and an amount of expenses
02:26:19 17 that could come up, especially down the road, were
02:26:23 18 talked about and they boiled them down to nominal
02:26:27 19 administration expenses.

02:26:28 20 Q. (BY MR. NASSE) And those wide-ranging things,
02:26:30 21 among those was specifically mentioned priority return
02:26:35 22 payments to 575 investors?

02:26:36 23 MR. HULINGS: Asked and answered.

02:26:38 24 THE WITNESS: Dividends, maturities, yes,
02:26:41 25 payments to investors were expenses of the fund and

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02:26:44 1 those would be included in that.

02:26:45 2 Q. (BY MR. NASSE) Prior to return payments?

02:26:45 3 A. That's what I just said.

02:26:45 4 Q. MR. NASSE: Well, You said dividends.

02:26:49 5 THE WITNESS: Sorry, I should have waited.

02:26:51 6 MR. HULINGS: Asked and answered. Go

02:26:53 7 ahead.

02:26:53 8 Q. (BY MR. NASSE) And when -- do you have a

02:26:54 9 recollection of when that conversation occurred?

02:26:56 10 A. That's also been asked and answered and we did

02:26:59 11 it over a long period of time because this was a very

02:27:01 12 key area of the PPM and it started again with the email

02:27:07 13 where I was pointing out that Russ had left and I was

02:27:11 14 pointing out here's where we are. We need to find a

02:27:16 15 solution to where we're going to accomplish our goals,

02:27:18 16 take care of investors.

02:27:20 17 And so this is what started the very, very

02:27:24 18 lengthy discussion and vetting of different fund designs

02:27:28 19 and the language, proper disclosures that should go in

02:27:33 20 there between that time period.

02:27:35 21 Q. And you say "lengthy discussion." That was a

02:27:38 22 discussion in person, over the phone?

02:27:39 23 A. Emails, phone, everything we talked about

02:27:41 24 before, trading back and forth and changes in the

02:27:44 25 documents.

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02:28:50 1 that was attached to an email. I just can't recall
02:28:54 2 without looking back.

02:28:55 3 Q. Okay. Did -- regardless of -- not even in the
02:29:27 4 context of nominal administrative expenses, did Carlile
02:29:31 5 Patchen ever advise you that it was permissible to pay
02:29:34 6 existing investors with new investor investments?

02:29:41 7 A. Yes.

02:29:42 8 Q. When did that occur?

02:29:44 9 A. It occurred continuously throughout the
02:29:48 10 representation, including after the privilege waiver
02:29:51 11 date.

02:29:52 12 MR. HULINGS: Let's not discuss anything
02:29:53 13 after the privilege waiver date. You're instructed not
02:29:58 14 to answer anything about after the privilege waiver
02:30:01 15 date.

02:30:01 16 Q. (BY MR. NASSE) Not asking you anything about
02:30:03 17 after December 2019, when did you have conversation
02:30:08 18 where Carlile Patchen advised you that it was
02:30:10 19 permissible to pay existing investor with new investor
02:30:16 20 investments?

02:30:17 21 A. We had many conversations about the reality of
02:30:20 22 being an issuer and complying with securities laws. And
02:30:28 23 Dennis was very adamant during a lot of these
02:30:30 24 conversations including about this provision that money
02:30:32 25 was fungible, it's common sense as well.

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02:30:36 1 And a lot of our discussions, when it came
02:30:38 2 into, like, disclosure of this, what the process would
02:30:41 3 be, what the internal controls would be, were around
02:30:44 4 that concept that Dennis kept coming back to as one of
02:30:48 5 his -- his major themes.

02:30:50 6 Q. And it was permissible?

02:30:51 7 A. It's an expense of the fund.

02:30:54 8 Q. Did you -- did you ever ask Mr. Concilla or
02:30:59 9 anyone at Carlile Patchen whether doing so would be
02:31:02 10 Ponzi scheme?

02:31:03 11 MR. HULINGS: Objection; vague, and legal
02:31:05 12 conclusion as to "Ponzi scheme."

02:31:08 13 But you can answer.

02:31:09 14 THE WITNESS: I believe there's an email.
02:31:10 15 We might have even reviewed -- that was disclosed, we
02:31:14 16 might have even reviewed it already where Dennis gave a
02:31:18 17 brief example of a Ponzi scheme. So no, he did not
02:31:21 18 consider what we were doing or any of the disclosures or
02:31:27 19 our internal processes or controls a Ponzi scheme.

02:31:31 20 Q. (BY MR. NASSE) Okay. We can go back. I
02:31:32 21 believe he says -- he discusses what are the hallmarks
02:31:35 22 of a Ponzi scheme. Does that sound right?

02:31:38 23 A. I believe he discusses in context to that email
02:31:42 24 a -- one of the elements of a Ponzi scheme as I
02:31:47 25 understand it and as it related to that specific

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02:31:50 1 conversation.

02:31:50 2 Q. But in that conversation you're not discussing
02:31:54 3 using new investor money to pay existing investors?

02:31:59 4 MR. HULINGS: Well, do you want to show him
02:32:01 5 the document?

02:32:01 6 MR. NASSE: Yeah. Sure. I think it's back
02:32:09 7 here. It's tab 23, so Exhibit 35. I think it's the
02:33:02 8 bottom of the first page of Exhibit 35.

02:33:04 9 THE WITNESS: Okay.

02:33:06 10 Q. (BY MR. NASSE) And he says -- well, it's an
02:33:07 11 over general -- I think this is what you're referring
02:33:09 12 to, (Reading:) Well, it's an overgeneralization, but
02:33:11 13 the hallmark of a Ponzi-style scheme is large portions
02:33:15 14 of principle payments going to pay fees and salaries.

02:33:18 15 Do you see that?

02:33:19 16 A. Yeah. Essentially to management as he says two
02:33:22 17 or three sentences before, correct.

02:33:24 18 Q. Great. There he's not talking about paying
02:33:27 19 existing investors with new investor investments?

02:33:30 20 MR. HULINGS: Hold on.

02:33:30 21 THE WITNESS: Okay.

02:33:31 22 MR. HULINGS: Objection. The document
02:33:32 23 speaks for itself.

02:33:33 24 THE WITNESS: Yeah, I would agree. It does
02:33:35 25 speak for itself.

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02:34:27 1 and I've answered that.

02:34:28 2 Q. (BY MR. NASSE) What was your --

02:34:29 3 A. I used -- by the way, I used this email in my
02:34:31 4 previous response as one example that Dennis would go
02:34:34 5 through when he talked about the realities of being an
02:34:37 6 issuer and complying with securities laws.

02:34:40 7 Q. Do you have a specific recollection of another
02:34:43 8 example?

02:34:46 9 MR. HULINGS: Objection; vague. Example of
02:34:49 10 what?

02:34:50 11 MR. NASSE: Another example of him saying
02:34:52 12 that it was permissible to pay existing investors with
02:34:56 13 new investor money.

02:34:58 14 MR. HULINGS: That was misstating his prior
02:34:59 15 testimony. And so we'll call it vague.

02:35:01 16 THE WITNESS: We had wide-ranging, frank
02:35:07 17 advice about the realities of being an issuer in a
02:35:11 18 complex gotcha SEC enforcement environment. And just as
02:35:17 19 it says here, what is likely to draw attention and
02:35:20 20 scrutiny and what isn't. And that is why in the company
02:35:25 21 advance they determined that the nominal administration
02:35:29 22 expenses, meaning the expense of the fund, being one of
02:35:33 23 his big things that money was fungible and the 575 fee
02:35:37 24 payments were expenses of the fund that it was proper
02:35:39 25 disclosure, proper process.

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02:36:47 1 being an issuer.

02:36:48 2 MR. HULINGS: That's not what -- that
02:36:48 3 misstates prior testimony and argumentative.

02:36:51 4 THE WITNESS: Yeah, I did not say that.
02:36:52 5 What I said is a lot of the frank discussion that Dennis
02:36:56 6 Concilla especially, Andy, too, at times had with us
02:37:00 7 including around this provision and advice around this
02:37:02 8 provision was in justifying their counsel was because of
02:37:08 9 the very difficult complex environment that an issuer of
02:37:14 10 securities had to deal with under the SEC's laws, rules,
02:37:20 11 as well as the enforcement divisions. And it's -- I
02:37:24 12 mean it's right here in this email as well.

02:37:26 13 Q. (BY MR. NASSE) And so you -- deeproot Policy
02:37:34 14 Services, Inc. and its affiliates under your direction
02:37:36 15 did pay existing investors with new investor money,
02:37:39 16 correct?

02:37:40 17 MR. HULINGS: So object to vagueness,
02:37:43 18 argumentative.

02:37:45 19 But you can answer.

02:37:46 20 THE WITNESS: We took the advice that we
02:37:48 21 were given by competent securities counsel who we didn't
02:37:52 22 hide anything from and we followed their advice.

02:37:56 23 Q. (BY MR. NASSE) And that included -- just to
02:38:01 24 make sure, that advice that you followed included paying
02:38:05 25 existing investors with new investor funds?

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02:38:59 1 answered. It's vague and ambiguous. It's
02:39:02 2 argumentative.

02:39:02 3 And to the -- again, the privilege waiver
02:39:05 4 does not exceed January 1, 2019, so to the extent the
02:39:10 5 answer involves communications after that, you are
02:39:12 6 instructed not to answer. But you can answer as to the
02:39:19 7 question relating to prior to 2019.

02:39:22 8 THE WITNESS: As I said before, Dennis --
02:39:24 9 one of Dennis's major things was money was fungible.
02:39:28 10 Payments to investors are expenses of the funds. That
02:39:32 11 is why they chose the language and proper disclosure
02:39:35 12 they did and we followed their advice.

02:39:38 13 Q. (BY MR. NASSE) And in following their
02:39:40 14 advice -- I mean, it's -- I mean, it's a nonresponsive
02:39:44 15 answer. My question was very simple. I understand what
02:39:47 16 you're saying their advice was. You're saying you
02:39:49 17 followed their advice. I'm asking: Did that include
02:39:53 18 paying -- and I'll be more specific -- paying priority
02:39:57 19 return payments to existing 575 investors with
02:40:04 20 investments from new 575 investors?

02:40:06 21 MR. HULINGS: So that's -- that is vague
02:40:09 22 and ambiguous, that is argumentative, and it has been
02:40:13 23 asked and answered.

02:40:17 24 You can answer again if you can follow the
02:40:22 25 question.

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02:40:22 1 THE WITNESS: One of Dennis's major themes
02:40:26 2 was the fungibility of money. It's also common sense,
02:40:29 3 which I don't know why you can't get yourself. Because
02:40:33 4 it was expenses, because we were -- it's disclosed
02:40:38 5 according to them, proper disclosure, and our processes
02:40:43 6 controls that Andy and Dennis helped form and knew well
02:40:46 7 of, we acted upon their advice.

02:40:51 8 Q. (BY MR. NASSE) And when you say -- you said
02:40:52 9 because it is -- it was expenses, what is the "it"
02:40:55 10 you're referring to?

02:40:57 11 A. You were asking about the 575 P payments as an
02:41:02 12 expense of the fund according to Dennis and Andy as
02:41:06 13 disclosed that they felt was good disclosure, those
02:41:10 14 expenses of the funds can be paid fungible money in the
02:41:14 15 fund, one dollar in is -- could be interchanged with a
02:41:17 16 dollar out, and that was proper according to their
02:41:20 17 advice and we took their advice.

02:41:23 18 Q. Did you ever ask Carlile Patchen whether you
02:41:27 19 could disclose -- you should disclose in the PPM that
02:41:30 20 you were paying existing investors with new investor
02:41:34 21 funds?

02:41:34 22 MR. HULINGS: So --

02:41:36 23 MR. NASSE: I'm talking about in the
02:41:38 24 context before 2019.

02:41:40 25 MR. HULINGS: Okay. I'm going to object to

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02:41:42 1 vague. I'm not even sure I follow that question. You
02:41:45 2 might want to try it again.

02:41:46 3 Q. (BY MR. NASSE) Did you ever ask Carlile
02:41:48 4 Patchen whether you should disclose in the PPM that you
02:41:50 5 would pay existing investors with new investor funds?

02:41:54 6 MR. HULINGS: You can answer.

02:41:56 7 THE WITNESS: Yes. And this was one of the
02:42:01 8 con -- and we talked about several times. But the
02:42:04 9 company advance section and the language therein was
02:42:06 10 their response to those types of discussions.

02:42:26 11 MR. HULINGS: If we're going to change
02:42:28 12 topics or exhibits, I think we should take a break.

02:42:31 13 MR. NASSE: I'm still on the exhibit PPM.

02:42:33 14 MR. HULINGS: We might still take a break.
02:42:35 15 How much longer on this?

02:42:36 16 MR. NASSE: Not much longer. Well, depends
02:42:39 17 on his answer, five, ten minutes.

02:42:41 18 MR. HULINGS: Okay.

02:42:44 19 Q. (BY MR. NASSE) If I can refer you to the
02:42:52 20 bottom of the page, it's ending in 4510. It's -- this
02:42:57 21 is Contingent Security Agreement. And you see there it
02:43:11 22 says, (Reading:) The company -- and then this document
02:43:13 23 that refers to the 575 Fund for the LLC -- agrees to
02:43:16 24 immediately grant a security interest to class B
02:43:20 25 shareholders and all assets and holds in the company's

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03:48:30 1 not to answer.

03:48:32 2 MR. NASSE: And just for the record, we
03:48:34 3 disagree with that characterization of the privilege.
03:48:36 4 Go for it.

03:48:37 5 MR. HULINGS: You can answer.

03:48:38 6 THE WITNESS: Do I get to answer? Okay. I
03:48:41 7 know this was sent to them. I do not recall ever
03:48:44 8 discussing it in detail with them. Might have happened.
03:48:47 9 I don't recall.

03:48:48 10 Q. (BY MR. NASSE) All right. Was -- to your
03:48:49 11 knowledge, was the investment allocation agreement ever
03:48:51 12 provided to investors?

03:48:54 13 A. I believe that conversation came up and, no, we
03:49:07 14 did not due to that conversation.

03:49:10 15 Q. A conversation with Carlile Patchen?

03:49:12 16 A. Yes.

03:49:13 17 Q. When did that conversation occur?

03:49:14 18 A. It would have occurred around this time period,
03:49:20 19 I'm sure.

03:49:20 20 Q. And you had it with Mr. Concilla and
03:49:22 21 Mr. Federico or just one?

03:49:24 22 A. I don't remember.

03:49:25 23 Q. Okay. Do you remember if that conversation was
03:49:26 24 over the phone or an email?

03:49:29 25 A. I don't remember if it was email or phone.

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04:17:41 1 during the investigation --

04:17:42 2 MR. HULINGS: No, no, no. Yeah, okay.

04:17:44 3 Fair enough. So other than -- okay. So to the extent
04:17:51 4 that your answer concerns prior to January 1, 2019, you
04:17:58 5 can answer.

04:17:58 6 THE WITNESS: I cannot answer.

04:18:00 7 Q. (BY MR. NASSE) Okay. As it relates to
04:18:35 8 Exhibit 5, so it's the September 2019 PPM, did you seek
04:18:47 9 legal advice from Carlile Patchen in connection with
04:18:49 10 the -- with Exhibit 5?

04:18:52 11 A. I can't recall.

04:18:57 12 Q. If you can turn to page in Exhibit 5 ending in
04:19:22 13 4834, and I'm pointing specifically to the provision --
04:19:36 14 the paragraph titled, "Risks Illiquidity."

04:19:39 15 Do you see that?

04:19:40 16 A. I see that.

04:19:42 17 Q. Okay. Read the entire paragraph, but I'm
04:19:46 18 pointing specifically to the sentence, "In addition, by
04:19:50 19 using our ultimate parent."

04:19:53 20 A. Okay.

04:19:54 21 Q. Okay. In the sentence, (Reading:) In addition
04:19:56 22 by using our ultimate parent company, Policy Service,
04:20:00 23 Inc., our sole affiliated policy administration provider
04:20:03 24 between us and the insurance carrier, we are unable to,
04:20:07 25 quote, raid the piggy bank.

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04:20:11 1 Did you ask Carlile Patchen about that
04:20:15 2 sentence of the PPM?

04:20:18 3 A. These were disclosures written with the help of
04:20:20 4 Jerry and Phil during the S-1 process and vetted by Andy
04:20:25 5 and Dennis and since it was vetted used in the updated
04:20:28 6 PPM here.

04:20:30 7 Q. When you say, vetted by Jerry and Phil, that
04:20:41 8 was in connection with the DRS for The Queue Fund; is
04:20:45 9 that correct?

04:20:45 10 A. That is correct.

04:20:46 11 Q. Okay. And you're saying that you use those --
04:20:50 12 that same terms in this PPM?

04:20:52 13 A. This section, I believe, is word for word right
04:20:55 14 out of the DRS for The Queue Fund, but as best I could
04:21:00 15 recollect.

04:21:02 16 Q. Okay. Did Mr. Wik ever advise you that you get
04:21:05 17 to use that language in the 575 fund PPM?

04:21:09 18 A. I don't recall.

04:21:13 19 Q. Did Mr. Forret ever advise you to use the
04:21:16 20 language from the Queue Fund DRS submission in the 575?

04:21:25 21 A. I don't recall.

04:21:26 22 Q. Did Carlile Patchen ever advise you to use the
04:21:31 23 language used in the Queue Fund S-1 DRS in the 575 Fund
04:21:37 24 PPM as reflected in Exhibit 5?

04:21:43 25 A. I don't recall them ever telling me I couldn't.

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06:12:43 1 MR. NASSE: Are we back on the record?

06:12:46 2 Q. (BY MR. NASSE) I'll refer you to, again, on
06:12:49 3 Exhibit 36 page ending 4505 regarding underlying assets
06:12:54 4 life policies. And 575 Fund invested in life policies
06:13:17 5 through buying positions in the dGRD Fund; is that
06:13:22 6 right?

06:13:22 7 A. That is correct.

06:13:23 8 Q. Okay. Is that fact disclosed in the PPM here
06:13:25 9 as Exhibit 36?

06:13:27 10 A. I don't know without reading it. I don't
06:13:30 11 recall.

06:13:31 12 Q. Okay. I mean, we can go back off the record if
06:13:35 13 you want but -- or if you are not going to count the
06:13:39 14 time, you can read that section or I can make the
06:13:42 15 representation that it is not but...

06:13:45 16 MR. HULINGS: Why don't we just go based on
06:13:48 17 the representation and his memory. I mean, otherwise,
06:13:51 18 we have to go off the record for him to review and it's
06:13:53 19 going to take a while.

06:13:55 20 Q. (BY MR. NASSE) Did you discuss the fact that
06:13:58 21 the 575 was purchasing its interest in life policies
06:14:04 22 through buying positions in the dGRD Fund with Carlile
06:14:07 23 Patchen?

06:14:07 24 A. Yes.

06:14:08 25 Q. And what did they tell you with regards to

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06:28:41 1 THE WITNESS: I want to make sure coming
06:28:43 2 back in that we're on Exhibit 5, correct?

06:28:48 3 Q. (BY MR. NASSE) Correct.

06:28:50 4 A. Okay. I mean, this is consistent with all of
06:28:57 5 the discussions Andy and Dennis and I had back to the
06:29:02 6 very beginning of 2015 especially regarding the purpose
06:29:08 7 of the575, the dGRD, and bringing in other capital --
06:29:13 8 other capital acquisitions as part of the allocations.

06:29:20 9 Q. Do you recall preparing any written analysis to
06:29:29 10 come to the conclusions that are reflected in the
06:29:30 11 paragraph that we discussed in Exhibit 5, the purpose of
06:29:33 12 this type of investment?

06:29:35 13 MR. HULINGS: Objection; vague as to
06:29:37 14 "written analysis."

06:29:37 15 But you can answer if you understand it.

06:29:39 16 THE WITNESS: I'm sure there was verbal
06:29:41 17 communication. There might have even been some editing
06:29:45 18 that was done of this paragraph. I just don't remember.

06:29:48 19 Q. (BY MR. NASSE) Yeah. To be clear, I'm not
06:29:50 20 asking about the editing of this paragraph. I'm asking
06:29:52 21 did you have any -- any written documentation of how you
06:29:56 22 determined that the capital acquisitions as described in
06:30:00 23 here were appropriate or suitable for the575 fund?

06:30:09 24 MR. HULINGS: So just to -- maybe I can
06:30:12 25 help here just to clarify. We're talking about -- not

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06:30:14 1 talking about whether this language was disclosed to
06:30:18 2 lawyers. You're just saying did you do anything
06:30:20 3 written --

06:30:21 4 MR. NASSE: Correct.

06:30:21 5 MR. HULINGS: -- as part of the analysis
06:30:23 6 that's reflected in here. Is that an accurate --

06:30:25 7 MR. NASSE: Correct.

06:30:26 8 MR. HULINGS: Okay.

06:30:26 9 THE WITNESS: Yes. So again, we detailed
06:30:28 10 this in the second rogs to several things. We had
06:30:31 11 extensive research and analysis in deeproot Tech and
06:30:38 12 deeproot Pinball well before we ever started it and when
06:30:41 13 we started it. We provided most of that to Dennis and
06:30:45 14 Andy who signed off on it very early on. And you can
06:30:49 15 imagine two seasoned security attorneys when they're --
06:30:54 16 when you mention the word, hey, we want to get into
06:30:56 17 Pinball, you can imagine the number of in-depth
06:30:59 18 questions making sure that we had done that analysis.

06:31:02 19 Q. (BY MR. NASSE) Where would -- where would we
06:31:05 20 find that analysis?

06:31:12 21 MR. HULINGS: Objection; vague as to
06:31:13 22 "analysis."

06:31:14 23 Q. (BY MR. NASSE) The analysis you just
06:31:16 24 described, where would we find a document or record of
06:31:18 25 it?

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CERTIFICATE OF WITNESS

I, ROBERT MUELLER, do hereby declare under penalty of perjury that I have read the entire foregoing transcript of my deposition testimony, or the same has been read to me, and certify that it is a true, correct and complete transcript of my testimony given on March 9, 2023, save and except for changes and/or corrections, if any, as indicated by me on the attached Errata Sheet, with the understanding that I offer these changes and/or corrections as if still under oath.

gh I have made corrections to my deposition.

_____ I have NOT made any changes to my deposition.

Signed: _____

ROBERT MUELLER

Dated this 8th day of September of 2023.

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ERRATA SHEET

Deposition of: ROBERT MUELLER

Date taken: MARCH 9, 2023

Case: SEC v. MUELLER, et al.

Page	Line	Change	Reason
15	5	Replace "entity" with "persons or entities"	Clarification
35	18	Add "than" after "personally"	Correction
69	20	Replace "company, Wisconsin" with "company in Wisconsin"	Correction
77	11	Replace "in" with "and"	Correction
78	22	Replace "dead" with "debt"	Correction
78	23	Replace "dead" with "debt"	Correction
88	4	Replace "used" with "the usual"	Correction
89	10	Replace "it's" with "that's"	Correction
113	7	Replace "of" with "if"	Correction
126	18	Replace "a trustee" with "the Bankruptcy trustee"	Clarification
139	15	Replace "Medio" with "BDO"	Correction
151	23	Replace "DRSS 1" with "DRS, S-1"	Correction
152	17	Replace "of" with "and"	Correction
172	25	Replace "Wik" with "Wick"	Correction
175	20	Replace "counsel advice" with "counsel or advice"	Correction
176	13	Replace "it was" with "was it"	Correction
188	1	Replace "dues" with "due to's"	Correction
204	7	Replace "DBs" with "BDs"	Correction
211	12	Replace "DBs" with "BDs"	Correction
218	17	Replace "in" with "and"	Correction
239	15	Replace "Becka" with "Becca"	Correction
239	18	Replace "Dendridge" with "Dandridge"	Correction
252	7	Replace "Yeah," with "No,"	Clarification
255	7	Replace "fault" with "default"	Correction
275	15	Replace "security" with "securities"	Correction

294 3 Replace "pull" with "pool"

Correction
JH

Signed



Dated

9-8-2023

314

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REPORTER'S CERTIFICATION
DEPOSITION OF ROBERT MUELLER
TAKEN MARCH 9, 2023

I, Janalyn Elkins, Certified Shorthand
Reporter in and for the State of Texas, hereby certify
to the following:

That the witness, ROBERT MUELLER, was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the original deposition was delivered to
DAVID A.NASSE;

That a copy of this certificate was served on
all parties.

I further certify that pursuant to FRCP No.
30(f)(i) that the signature of the deponent was
requested by the deponent or a party before the
completion of the deposition and that the signature is
to be returned within 30 days from date of receipt of
the transcript. If returned, the attached Changes and
Signature Page contains any changes and the reasons
therefor.

I further certify that I am neither counsel
for, related to, nor employed by any of the parties in
the action in which this proceeding was taken, and

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1 further that I am not financially or otherwise
2 interested in the outcome of the action.

3 Certified to by me this 16th day of March 2023.

4
5
6 /s/ Janalyn Elkins

Janalyn Elkins, CSR No. 3631

7 Expiration: 1/31/2025

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